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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
Amendment of the Commission's Rules to  
Establish Competitive Service Safeguards  
for Local Exchange Carrier Provision of  
Commercial Mobile Radio Services )

WT Docket No. 96-162

)  
Implementation of Section 601(d) of  
the Telecommunications Act of 1996 )

To: The Commission

## PETITION FOR PARTIAL RECONSIDERATION

Guam Cellular and Paging, Inc. ("Guam Cellular"), by its attorney and pursuant to Section 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 405(a), and Section 1.429(a) of the Commission's Rules and Regulations, 47 C.F.R. § 1.429(a), hereby seeks partial reconsideration of the *Report and Order* (FCC 97-352; released October 3, 1997), 62 Fed. Reg. 63,864 (December 3, 1997),<sup>1</sup> in the above-captioned proceeding, in support whereof, the following is respectfully shown:

1. In the *Report and Order*, the Commission imposed structural separation (*i.e.*, separate affiliate) requirements on incumbent LECs ("ILECs") providing in-region broadband CMRS services. Rural telephone companies were exempt, and ILECs serving fewer than two percent of the nation's subscriber lines are authorized to petition the Commission for suspension of the structural separation requirements.<sup>2</sup> Guam Cellular respectfully asks that the Commission partially reconsider these provisions and declare that the rural telephone company exemption shall not apply to Guam Telephone Authority ("GTA") or similarly situated LECs, if any.

<sup>1</sup> Pursuant to Sections 1.4(b)(1) and 1.429(d) of the Commission's Rules, 47 C.F.R. §§ 1.4(b)(1) & 1.429(d), this pleading is timely filed within thirty days of Federal Register publication.

<sup>2</sup> In addition to the primary relief requested herein, Guam Cellular asks that Section 20.20(d)(2) be amended to provide that a copy of any petition by a LEC for suspension of the structural separation requirements must be served upon each CMRS carrier interconnected with the LEC.

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2. GTA is the monopoly provider of landline local exchange services in Guam. GTA also provides cellular service in an area coterminous with its landline service area. Guam Cellular is in direct competition with GTA for the provision of cellular services and is dependent upon Guam Cellular for interconnection with the landline network. Guam Cellular is thus directly affected by the rules adopted in the *Report and Order*.

3. The separate affiliate requirements were adopted as both a prophylactic safeguard and a remedial measure to assist the Commission in policing anticompetitive actions by LECs, including discriminatory interconnection practices. The public interest rationale for this regulatory action is best summarized in the Commission's own words:

We set forth a framework for such safeguards that, for the first time, treats incumbent LEC provision of all broadband CMRS consistently, and that is narrowly tailored to address specific concerns about potential anticompetitive use by the incumbent LECs of market power derived from their control of "bottleneck" wireline local exchange facilities. We adopt these safeguards to address concerns that recent developments in the CMRS market -- such as direct competition among telecommunications carriers facilitated by the 1996 amendments to the Communications Act, increased competition in the CMRS marketplace, and the development of fixed wireless services -- may increase the incentive for anticompetitive behavior by incumbent LECs. We believe that incumbent LECs and broadband CMRS operators are increasingly likely to be direct competitors. The competitive pressure brought to bear on the local exchange market by broadband CMRS providers could increase the incentive for incumbent LECs to engage in anticompetitive practices, such as discriminatory interconnection, cost-shifting, and anticompetitive pricing practices. Consistent with the pro-competitive, deregulatory objectives of the Telecommunications Act of 1996, we establish safeguards that will help to ensure fair rules of competition, while doing so in the least burdensome manner possible that directly addresses the potential for anticompetitive behavior.

*Report and Order* at ¶ 1 (footnotes omitted).

4. The Commission did not exempt rural telephone companies because they are immune from such anticompetitive potential. To the contrary, the Commission reiterated its consistent holding "that neither a carrier's size nor the geographic characteristics of its service area, will by themselves affect the incentives or ability to discriminate against rivals, or to engage in other anticompetitive activity." *Report and Order* at ¶ 72. The decision to exempt rural telephone companies was based on a balancing of "the benefits of these safeguards in helping ... to detect and prevent anticompetitive conduct, especially discrimination" against "the cost imposed by separation." *Id.* at ¶ 69. The Commission is concerned that rural telephone companies "might not have the resources to comply with ... separate affiliate safeguards and still provide CMRS." *Id.* at ¶ 73. "By reducing the regulatory burden on rural LECs [the Commission hopes to] encourage the development of wireless services in areas where otherwise there may be no wireless service at all." *Id.*

5. GTA is unique among LECs in that it is an agency of the government of Guam.<sup>3</sup> With the full faith and credit of the Guamanian government behind it, GTA is hardly in the same situation as the rural telephone companies the Commission's policies seek to assist financially. The Commission has previously noted that GTA "has substantial financial resources." *Guam PUC Declaratory Ruling & NPRM* at ¶ 33. It is well established that state and local governments are second only to the U.S. federal government in terms of the safety and reliability of debts issued and/or backed by them. Private sector CMRS competitors can not even hope for a level playing field when it comes to competing with government agency for financing.

6. Nor is GTA's service area spread out through sparsely populated wilderness. Rather, GTA enjoys "significant economies of density, connectivity, and scale." *Guam PUC Declaratory Ruling & NPRM* at ¶ 33. Guam's 1990 population of 133,152, while small by comparison to any of the states, is contained within a compact area of only 212 square miles, giving Guam a population density of approximately 628.1 persons per square mile.<sup>4</sup> Guam is thus no less sparsely populated than numerous major metropolitan areas on the mainland, e.g., the Houston, TX PMSA (620.5), the Pittsburgh, PA PMSA (604.9), and the San Diego, CA MSA (594.1). Guam is significantly more densely populated than many metropolitan areas, e.g., the Atlantic City, NJ MSA (391.3), the Atlanta, GA MSA

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<sup>3</sup> While there may be some rural telephone companies that are municipally owned, to the best of Guam Cellular's knowledge the only other case in which a monopoly landline local exchange carrier is an agency of the state-level government is that of the Puerto Rico Telephone Company, which is not a rural telephone company. The Commission has previously reviewed the history and status of GTA:

In 1973, the government of the Territory of Guam created GTA as a not-for-profit public corporation to provide local exchange and exchange access services to the Territory. Since that time, GTA has operated as a semi-autonomous agency of the Territory of Guam. n21 GTA is regulated by the Guam Commission, which is also an agency of the government of the Territory of Guam. By 1995, GTA operated the twenty-ninth largest local telephone network in the United States, serving approximately 67,000 access lines. GTA appears to be the sole provider of local telephone service to the more than 130,000 residents of Guam.

*Guam Public Utilities Commission Petition for Declaratory Ruling, Declaratory Ruling and Notice of Proposed Rulemaking in CC Docket No. 97-134 (hereinafter cited as "Guam PUC Declaratory Ruling & NPRM") (FCC 97-171; released May 19, 1997) at ¶ 6 (footnotes omitted).*

<sup>4</sup> Guam's population growth is approximately 2.5% per year. If computed using the 1995 estimated population of 145,000, Guam's population climbs to about 684 persons per square mile. To facilitate a meaningful comparison to other U.S. areas, the discussion in the body relies on 1990 data.

(553.3), the Dallas, TX PMSA (571.1), and the Portland, OR PMSA (331.2). Indeed, of the 3,142 counties and comparably geographic units tracked by the Census Bureau, only 169 (i.e., only one-half of one percent) have population densities greater than Guam.<sup>5</sup>

7. GTA enjoys rural telephone company status solely because it serves fewer than 100,000 access lines in its operating territory and thus technically falls within the definition under Section 3(37)(C) of the Communications Act, 47 U.S.C. § 153(37)(C). *Guam PUC Declaratory Ruling and NPRM* at ¶ 21. But GTA possesses virtually none of the attributes that otherwise arguably justify the Commission's preferential treatment of rural telephone companies. It is considerably better positioned vis-à-vis virtually every other rural telephone company in the country in terms of its ability to finance its current and future operations. Its service area, moreover, is decidedly *not* rural at all, but a densely populated island allowing it to realize great economies of scale. There is quite simply no justification for exempting GTA from the separate affiliate requirements adopted in the *Report and Order*.

8. The Commission has previously recognized that GTA's unique status may warrant treating it differently than blind application of technicalities would otherwise indicate. The Commission has determined that GTA is not an ILEC within the meaning of section 251(h)(1) of the Communications Act, *Guam PUC Declaratory Ruling and NPRM* at ¶¶ 14-21, the Commission has tentatively concluded that GTA occupies the position of an ILEC and should be so treated for purposes of local competition and interconnection provisions pursuant to Section 251(h)(2)(B) of the Act. *Id.* at ¶¶ 22-43. The Commission has formally proposed such treatment, reasoning as follows:

An unduly literal construction of section 251(h)(2)(B) would mean that these statutory objectives would be thwarted in Guam unless GTA were to comply voluntarily with each of the obligations of section 251(c). Indeed, GTA appears to possess all of the advantages of incumbency characteristic of the incumbent LECs described in section 251(h)(1), advantages that can impede the development of competitive markets. For example, GTA apparently has substantial financial resources, significant economies of density, connectivity, and scale, and, most importantly, control of the bottleneck local exchange network in Guam. Thus, the seemingly dominant market presence of FTA in Guam appears to be precisely the type of non-competitive situation that Congress intended section 251(c) to redress.

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<sup>5</sup> The source for the above-recited figures and calculations is the U.S. Bureau of Census, *Land Area, Population, and Density for Metropolitan Areas: 1990* (released March 14, 1996).

*Id.* at ¶ 33. For the same reasons, the Commission must not relieve GTA of requirements designed to promote, preserve, and protect CMRS competition simply because GTA happens to meet the literal definition of a rural telephone company.

9. Application of the exemption to GTA is particularly unwarranted because of GTA's past and current conduct. Guam Cellular currently has a complaint pending before the Guam PUC alleging abuses of the very nature that structural separation requirements are intended to address, including anticompetitive discriminatory cost allocation, cellular pricing, and interconnection rates. *Guam PUC Docket No. 97-003*. In addition, for more than a year GTA has steadfastly resisted the negotiation of an interconnection agreement with Guam Cellular.<sup>6</sup> GTA's incentive and ability to disadvantage its CMRS competitors is undeniable. And given GTA's history of unjust, unreasonable, and unreasonably discriminatory practices vis-à-vis interexchange carriers, *IT&E Overseas, Inc. and PCI Communications, Inc.*, 7 FCC Rcd 4023, 4025-4026 (1992), it would be imprudent not to protect against discriminatory and anticompetitive treatment of CMRS carriers who represent a more direct and significant competitive challenge to GTA.

10. There is ample reason to withhold the rural exemption from GTA. The relief requested will not unreasonably prejudice GTA. As a carrier serving less than two percent of the nation's subscriber lines, GTA would be able to expressly seek exemption from the separate affiliate provisions on an ad hoc basis pursuant to Section 20.20(d)(2). This would permit the Commission to address the issue in light of a record reflecting the unique competitive circumstances of the Guam telecommunications market. Assuming GTA were able to demonstrate a bona fide public interest need for exemption, the Commission would still have the opportunity to fashion alternative protective measures uniquely tailored to GTA. The Commission should require, however, that any such request for exemption be served on Guam Cellular and any other CMRS carriers interconnected with GTA.

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<sup>6</sup> After a year of stonewalling and run-arounds, the matter was recently referred to GTA's Washington, D.C., communications counsel and the very preliminary stages of negotiation have now begun--more than a year after Guam Cellular's formal request.

11. In view of the foregoing, the Commission should partially reconsider the *Report and Order* and amend Section 20.20(d) of the Rules to read as follows (added material indicated by underscoring):

(d) *Exceptions.*

(1) *Rural Telephone Companies.* Rural telephone companies are exempted from the requirements set forth in paragraphs (a), (b) and (c) of this section. A competing telecommunications carrier, interconnected with the rural telephone company, however, may petition the FCC to remove the exemption, or the FCC may do so on its own motion, where the rural telephone company has engaged in anticompetitive conduct. Notwithstanding the foregoing, this exemption shall not apply to Guam Telephone Authority or its successors in interest and affiliated entities (other than an entity meeting the requirements set forth in paragraphs (a), (b) and (c) of this section).

(2) *Incumbent LECs with fewer than 2 percent of subscriber lines.* Incumbent LECs with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide may petition the FCC for suspension or modification of the requirements set forth in paragraphs (a), (b) and (c) of this section. The FCC will grant such a petition where the incumbent LEC demonstrates that suspension or modification of the separate affiliate requirement is (A) necessary to avoid a significant adverse economic impact on users of telecommunications services generally or to avoid a requirement that would be unduly economically burdensome, and (B) consistent with the public interest, convenience, and necessity.

(3) A copy of any petition filed pursuant to subparagraph (d)(2), above, must be served upon each CMRS carrier interconnected with the petitioning LEC. Upon receipt of such a petition, the Commission shall issue a public notice of its filing, stating the name of the petitioning LEC and giving the name or identifying description of the affected service area. All interested parties, including interconnected CMRS carriers, may submit comments within thirty (30) days of such public notice.

Respectfully submitted,

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